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Submitted via Electronic Docket

California Energy Commission
Docket Unit, MS-4
Docket No. 22-MISC-02
715 P Street
Sacramento, CA 95814

Re: **Comments of Joint Committee on Energy and Environmental Policy
and Western States Council of Sheet Metal, Air, Rail and
Transportation Workers on Resilient and Efficient Codes
Implementation Federal Funding Opportunity**

Dear Commissioners and Staff:

We write on behalf of the Joint Committee on Energy and Environmental Policy (JCEEP) and the Western States Council of Sheet Metal, Air, Rail and Transportation Workers (WSC-SMART) to comment on the Resilient and Efficient Code Implementation (RECI) Federal Funding Opportunity.

We strongly support the Commission's efforts to improve energy code compliance. As part of its multifaceted approach to accelerate the development and deployment of digital software tools to support cost-effective compliance and implementation of California's Building Energy Efficiency Standards codified in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations (California Energy Code), we urge the Commission to include in its RECI proposal a request for funding to support development and implementation of an electronic statewide compliance document data registry that will simplify and facilitate enforcement of energy code requirements for building code officials and would support future establishment of an electronic statewide heating, ventilation, and air conditioning (HVAC) equipment sales registry and compliance tracking system.

Section 40511 of the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), appropriates \$225 million in funding to “eligible entities to enable sustained cost-effective implementation of updated energy codes.” The U.S. Department of Energy (DOE) intends to issue a Funding Opportunity Announcement (FOA) to establish a competitive grant program to support successful and sustained implementation of updated building energy codes by states, local governments, and affected stakeholders.¹ DOE anticipates that the FOA will include several key areas of interest:

1. State and Local Code Adoption
2. Workforce Development
3. Implementation and Compliance
4. Innovative Approaches
5. Equity, Energy and Environmental Justice
6. Partnerships

On October 14, 2022, the Commission hosted a webinar to solicit input from local authorities having jurisdiction (AHJs) and interested parties on federal funding proposal ideas developed by staff for the upcoming RECI FOA. The Commission’s ideas focus on supporting local AHJs enforcement by developing and piloting innovative digital compliance software that will streamline the compliance, implementation, and enforcement process. We are concerned that this proposal may lead to hundreds of decentralized data registries – which would be inefficient and create an inherent barrier toward tracking code and permit compliance statewide. In particular, decentralized data registries would essentially forestall the future development of a HVAC sales registry and compliance tracking system to address the fact that up to 90% of HVAC retrofits are installed without even pulling a permit. A code compliance system that does not also help address the failure to pull permits will only improve building official compliance, not contractor permit compliance – which is the bigger issue.

A request for funding for a compliance document data registry is consistent with the eligible activities identified in Section 40511. Indeed, the DOE’s Notice of Intent recognizes that “[s]oftware tools can also improve energy code compliance by streamlining the compliance, enforcement and permitting processes, thereby

¹ U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, Notice of Intent to Issue: Funding Opportunity Announcement No. DE-FOA-0002812 (July 21, 2022) (“NOI”), *available at* <https://eere-exchange.energy.gov/FileContent.aspx?FileID=c6bb38bb-e423-4575-bde1-310a6edd9372>.

reducing the time and cost required to comply with modern codes.”² Although the Commission is currently in the process of developing an in-house compliance document and data repository, additional federal funding will accelerate development and implementation of a repository.

If California is going to meet its energy efficiency and greenhouse gas reduction goals, it needs to take concrete steps to improve permit compliance. The California Energy Code establishes requirements for installation and acceptance test documentation to verify that HVAC and other building construction that impact building energy efficiency are installed and are performing correctly. However, compliance rates for the requirements on installation and acceptance test documentation are very low. There are numerous reports of local building departments or officials failing to enforce or verify compliance with those requirements due to its perceived burden on enforcement resources.³ At the Commission’s 2025 Energy Code Compliance Tools Staff Workshop Presentation on March 22, 2022, building officials commented that they still viewed energy code compliance as the lowest priority when it came to enforcement and inspection. As a result, acceptance test technician certification providers, such as the California Advanced Lighting Controls Training Program, report that numerous counties and jurisdictions throughout California do not enforce acceptance test requirements at all.

Reports by the Commission and by the Public Utilities Commission have found that permits are obtained for HVAC replacements as little as 10% of the time, and that contractors comply with the California Energy Code’s quality installation requirements as little as 15% of the time.⁴ The efficiency of an HVAC system is

² *Id.* at p. 4.

³ California Energy Commission, Strategic Plan to Reduce the Energy Impact of Air Conditioners, CEC-400-2008-010 (June 2008), p. 17, 31; California Energy Commission, 2025 Energy Code Compliance Tools Staff Workshop Presentation (Mar. 22, 2022) p. 28, *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=242459&DocumentContentId=75961>; California Energy Commission, 2025 Energy Code Compliance Tools Staff Workshop Transcript (Mar. 2022), *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=243367&DocumentContentId=77072>.

⁴ California Energy Commission, Strategic Plan to Reduce the Energy Impact of Air Conditioners, CEC-400-2008-010 (June 2008), p. 17, 31; California Energy Commission, 2025 Energy Code Compliance Tools Staff Workshop Presentation (Mar. 22, 2022) p. 28, *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=242459&DocumentContentId=75961>; California Energy Commission, 20205 Energy Code Compliance Tools Staff Workshop Transcript (Mar. 2022), *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=243367&DocumentContentId=77072>.

highly dependent on the quality of its installation. Studies have found that up to 85% of replacement HVAC systems are installed incorrectly, resulting in a 20% to 30% increase in energy use.⁵ It is estimated that by correcting these problems, peak energy demand could be decreased by 400 megawatts.⁶ Moreover, the lack of compliance and enforcement hurts contractors that comply with the Energy Code who must bid against contractors that can cut costs by ignoring these requirements altogether.

A single, accessible statewide electronic compliance document data registry would significantly improve enforcement and compliance by providing a building official the ability to go to one registry to confirm that all compliance documentation requirements have been met. Such a registry would allow the Commission to easily track statewide compliance and would eliminate both valid and perceived excuses by building officials for not ensuring compliance with energy code requirements. A central data registry is also a critical first step in creating an equipment tracking system to address the pervasive problem of underground construction work performed without permits and without complying with acceptance test requirements in the California Energy Code.⁷ If the Commission instead moves toward a decentralized, multiple registry approach, this could effectively eliminate the ability to create a functional HVAC sales tracking registry in the future.

The compliance document data registry should be capable of registering and storing compliance, installation and acceptance test documentation required by the California Energy Code that would be uploaded directly to the registry by local

⁵ California Energy Commission, Strategic Plan to Reduce the Energy Impact of Air Conditioners, CEC-400-2008-010 (June 2008) p. 5 (poor quality installation of cooling systems result in a 20-30 percent increase in energy use).

⁶ California Energy Commission, Strategic Plan to Reduce the Energy Impact of Air Conditioners, CEC-400-2008-010 (June 2008) p. 17, 31; California Energy Commission, Request for Proposals: HVAC Equipment Installation Compliance Tracking System Business Needs and Functional Requirements, RFP-16-403 (Feb. 2017) p. 10.

⁷ To meet the State's compliance goal, the 2016 Existing Building Energy Efficiency Action Plan recommends development of an HVAC equipment sale registry that can be used to track HVAC sales to ensure that permit requirements are being followed for all HVAC installations. (California Energy Commission, 2016 Existing Buildings Energy Efficiency Plan Update (Dec. 2016) p. 22, available at <https://efiling.energy.ca.gov/getdocument.aspx?tn=214801>). A HVAC equipment sale registry would address numerous California Energy Code compliance issues, including permit noncompliance, noncompliance with the compliance documentation requirements, noncompliance with the Home Energy Rating System testing and acceptance testing requirements, unlicensed contractors, enforcement limitations on the Contractors' State License Board and local building department, and unfair competition from contractors who do not follow the law.

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AHJs or other applicable agencies, the parties responsible for completing the documentation or, where applicable, by Home Energy Rating System or Acceptance Test Technician Certification providers. This system should (1) track compliance, installation, and acceptance test documentation data electronically and make them available to local AHJs or other applicable agencies for their building permit review processes and to the Contractors State License Board or other applicable agencies for compliance and enforcement activities, (2) provide building owners access to uploaded compliance, installation, and acceptance test documentation data linked to buildings they own, (3) include the capability to support and be integrated with a HVAC equipment sales registry and compliance tracking system, and (4) provide the Commission with the ability to analyze the data to evaluate compliance, to inform development of building, appliance, and demand flexibility standards, and to inform program implementation and policy development. Such capabilities would be consistent with the recent proposed legislation SB 1164, which had wide stakeholder support but failed to get out of appropriations due to funding concerns.

We greatly appreciate the opportunity to provide comments and look forward to assisting the Commission's efforts to improve compliance with the California Energy Code.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew J. Graf", is positioned above the printed name.

Thomas A. Enslow
Andrew J. Graf

AJG:acp